CONFINDUSTRIA

Public Consultation - VAT in digital age

The current system of Value Added Tax (VAT), within the European Union, has become somewhat complex and burdensome for businesses and still presents numerous contexts characterized by a high risk of tax fraud with serious damage also to fair operators.
It appears necessary to update the VAT discipline in order to take advantage of the digital and technological innovation process. The goal is to make the VAT rules easier to understand and apply by operators, easier to be verified by tax administrations, and more efficient in order to prevent and fight the phenomenon of VAT fraud.
To this end, we support the initiative of the European Commission to use also digital tools to make VAT compliance more efficient and to simplify for businesses the tax obligation related to cross-border transactions.
In addition to our responses to the questionnaire, we want to provide some comments on the consultation's subject.

Digital Reporting Requirements

We strongly support the introduction of new measures to combat tax fraud and action to address non-compliance. Our view is any measures designed to reduce VAT fraud, such as DRRs, must be as consistent as possible across jurisdictions and must be designed in such a way that they work in harmony with the existing commercial landscape, thereby causing minimal business disruption whilst achieving their aim of shrinking.

For this reason, we agree with the importance of taking an action at the EU level in order to get a harmonized digital reporting system, but we also think that it is fundamental to consider that **some member State has already introduced their own reporting** system concerning domestic transactions.

It cannot be ignored that Italy is the first Member State with a mandatory electronic invoicing system but also other states (e.g., Spain and Portugal) have implemented their own reporting system and other states are in the process of introducing them (e.g., France). This scenario, which seems to outline a new fragmentation rather than pursuing the desired

harmonization objectives, is certainly a reason of concern for businesses who carry out cross-border trades.

In the next year, we expect that all EU Member States will have implemented some form of DRR system that's why it is crucial that this does not lead to 27 different models because we believe that a balanced mix between harmonization and interoperability across the EU is one of the most important goals.

From the experience of Italian companies (especially those advanced in the internal digitalization process), the electronic invoicing system - although in the first phase it involved significant investments and implementation efforts - is now considered an effective tool for strengthening VAT compliance. It is therefore inevitable that the hope would be to promote its generalized (and harmonized) adoption at the EU level, also in consideration of the fact that Italian companies would already be compliant with the new obligation, without incremental costs. Whether the current trend does not make it possible, it is necessary to ensure the **interoperability of the new system with those already implemented** in the member states.

Companies interact with multiple ERP and IT systems and must have the possibility to produce, calculate, and check the data in their own systems and then convert the data to the reporting environment. This ensures flexibility even if member states will adopt different standards regard to domestic transactions.

However, we believe that the European Commission must act now to implement a consistent EU model that guarantees interoperability with national DDR and that it's suitable by today's standards but also fit for the future. In this direction, we believe the new system of reporting should be based on continuous, rather than periodic, transaction controls (CTCs). This makes electronic invoicing the most "fit for future" CTC model and is also the model that provides the most quid pro quo benefits for businesses as it provides efficiency gains from AP/AR automation. Implementation of a pan-EU e-invoicing model would therefore be a long-term solution that minimizes costs for EU taxpayers whilst ensuring the EU aligns its DRR with global trends (which are overwhelmingly in the direction of e-invoicing).

This doesn't mean that all Member States must implement the EU e-invoicing system immediately. We are in favor of an e-invoicing system aligned with the so-called "option 4a" that is being considered by the European Commission. We appreciate the flexibility that this option gives Member States as to whether they implement a DRR for domestic transactions, whilst providing transparency for all tax authorities on intra-EU supplies. Most crucially for our members, where governments do implement an e-invoicing system, this will be harmonized from the outset (for new systems) or over time (as Member States converge any existing DRR system to the EU standard in the medium-term). In our view, this strikes the best balance between the interests of the Member States and the interests of EU businesses, the vast majority of whom are honest and compliant taxpayers for whom DRRs are a major cost.

Timing and information: Throughout the process of the implementation of a new DRR system, businesses should be adequately guided and protected in case of delays or errors. This means that it is important to ensure adequate time to address the costs of implementation, learn the new reporting rules, and ensure the non-application of penalties, especially in the first period of implementation.

We believe that the implementation of the DDR system, and the huge amount of data available, should lead to a review of the entire compliance system. With EU-DDRs in place, the VAT compliance system should be deeply simplified.

At first, the recapitulative statements should be removed. Moreover, we believe that a system of speedier and automatic VAT refunds could be set up. In addition, it would be appropriate to revise the Intra-Stat reporting obligations, whose data should already be documented by an EU DRR. The new DDR system should guarantee the prevention of the data imputation errors and should lead to considering non-punishable errors or delays that occur for the first time or behaviors without fraudulent purposes or damage to the Administration. We also believe that the area of responsibility of businesses unintentionally involved in VAT fraud (for example in the carrousel schemes) which relies on "reason to know" criteria should be revisited as it is often detrimental for honest taxpayers who accidentally find themselves in a fraud. Moreover, the efforts required of the businesses

should be reduced, as part of the due diligence activities necessary for the prevention of the risk of being unknowingly involved in VAT fraud.

In conclusion, we believe that if the tax administrations will access in real-time a tremendous and unprecedented amount of information to tackle fraud this should entail alleviating some of the burdens on honest taxpayers. In particular, the Commission should explore how the use of mandatory electronic invoicing could lead to relief in terms of the reliable audit trail requirements. Tax audits should also become much more targeted and focus on risky operators.

We believe that businesses need a **concrete simplification** of the tax obligations. The simplification process cannot be limited to the automatic pre-filled VAT return. For example, in Italy, we recognize that this simplification may be appropriate for smaller businesses but other businesses with many cross-border transactions, more complex value chains, etc., would still need to significantly update and correct the VAT return, regardless of it being pre-filled, thus heavily undermining the simplification potential of such a measure for larger companies. That's why it is important to review the entire VAT system, in order to achieve concrete advantages and simplifications.

Another path to the simplification process is to **remove the differences** between the national VAT legislation that are not suitable for an automated system. Several transactions are interpreted differently due to a lack of harmonization and different wordings in the Member States. An intra-EU DRR will still face different treatment of goods and services, exceptions and special regulations, and different interpretations of definitions, for example regarding mediation, multiple and composite supplies o particular regime as margin schemes.

Lastly, we would like to underline concerns about **privacy** and business integrity. There should be clear rules in place about who has access to the data and how long the data need to be kept, when and where data could/should be used, and potential rectification of data. The data required should not extend beyond what is needed for tax analysis and should not be used for purposes other than taxation.

One-Stop-Shop (OSS) & Import One-Stop-Shop (IOSS)

We agree with the importance of introducing a system that reduces formalities and costs related to the tax obligations required to operate in other member states. According to the legislation in place, there are too many situations in which a business, even small and even sporadically or occasionally, must declare and pay VAT in another member state. This scenario involves the obligation of VAT registration in the other Member State or designate a fiscal representative in each State where businesses operate with the consequence of facing different national VAT laws (e.g., different penalty regimes) and of being required to follow different accounting periods. This has a significant impact in terms of time and costs that often exceed the obtainable benefits. This creates a paradoxical situation (that should be avoided) in which the national business prefers to give up on the agreement rather than fulfill the obligation, with consequences in terms of revenues and competitiveness, for the company itself and for the national economy.

In order to solve these critical issues, we agree with the reflections on the **extension of the mechanism of the OSS and IOSS** to all cross-border transactions because it seems that both mechanisms have the objective of reducing administrative burdens and compliance costs. However, we would like to underline that the current mechanism, introduced for some B2C transactions, since the beginning has shown some complexity, that's why we believe that it is absolutely necessary to simplify as much as possible the rules, improve communication strategies, and guided the business in the adoption process. Moreover, it is necessary to guarantee a transitional period of adoption and identify optionality cases or temporary exclusions.

It would also be desirable - before introducing any mandatory procedure (which involves investments and implementation efforts by operators) – that the Administration carry out feasibility studies and tests to ensure the correct functioning of the platforms and data transmission mechanisms. This will avoid, as happened in these first months of application of the OSS and IOSS to the B2C transactions, that any technical or procedural problems lead to further burdens and obligations for operators.

OSS

The extension of the OSS mechanism to some transactions may become an opportunity to support the development of the objectives of the *green deal* and to solve some problems related to the classification of the transactions. For example, in the sector of e-mobility, the need for multiple VAT numbers is common under the current system and the operators face some critical issues with the classification of the electric vehicle charging especially, but not limited to public recharging point. Recharging activity entails many services far beyond the mere supply of electricity (e.g., real-time communication of characteristics and availability of the charging station, the possibility to reserve a recharging slot, and occupancy of the associated parking space). We believe the charging of electric vehicles should be ideally defined as a service, but we underline that in some Member States, EV charging is considered a supply of goods, and in others, there is no clear official guideline at all. According to the guideline issued by the VAT committee, the emerging approach is to consider such activities as a supply of electricity (goods) that implies a heavy administrative burden and considerable compliance costs for businesses when doing trade within the EU. The extension of the OSS should be an important simplification but before that, it will be also important to **overcome differences between Member States** regarding this and other issues about the transaction's classification.

IOSS

About the IOSS we believe that the **extension** of this mechanism would speed up and simplify the management of shipments during customs clearance and would significantly contribute to the effective implementation of the new rules. Businesses who decide to use the IOSS regime should have the possibility to declare all the transactions they carry out under the simplified regime and to declare all distance sales of goods within the IOSS imported from third countries regardless their value.

This would create advantages:

- to consumers, who would have the certainty of paying the VAT on goods purchased online avoiding unexpected costs at the time of delivery.

- to postal operators, who would see their activity considerably simplified at the time of customs clearance with positive cascading effects on final consumers in terms of speediness.
- to the entire e-commerce sector of online sales of goods.

We believe that the **abolition of the threshold of € 150** would provide further simplification to the VAT/E-Commerce package.
In the IOSS regime currently in force, there are some cases that can generate double taxation phenomena (one at the time of online purchase and another one at the time of importation). For example, currently happens that more orders, individually for an amount less than € 150, are merged in a single shipment for an amount exceeding €150, with the consequent VAT charged at the time of customs clearance. One solution could be the abolition of the current threshold of € 150.
The possibility of double taxation has been confirmed by the European Commission in the final version of the explanatory notes to the VAT Directive 2017/2455 and the critical issues raised after the implementation of the VAT/E-commerce package confirm that. We appreciate the European commission's speedy reaction, but we believe that this cannot be a definitive solution. In our opinion the future system of VAT application should provide clearer rules to avoid these phenomena, for example, national customs need to enable their IT systems to handle IOSS numbers for all customs declaration types, including H1 customs.

The extension of the IOSS would also simplify the postal operator activity at the customs clearance especially if the OSS will be well-coordinated with customs authorities and will be followed by an efficient exchange of information between the two administrations and by a consistent process of simplification of the customs legislation.
For example, it should be possible to use the customs declaration H7 (with a reduced set of data to fill in) for goods of value up to € 1.000, and it should be introduced a simplified mechanism for collecting customs duties. The VAT and the customs legislation should be harmonized because the rules in place have some differences that make the tax obligation more complex. For example, let's talk about the exchange rate issue. In the case of online purchase of goods in a currency other than Euro, according to the VAT rules, the € 150

threshold is verified at the time of the online purchase, whilst the customs verify the limit at the moment of the importation (we believe that the verification should be carried out at the time of purchase). If the value changes in this period, the postal operators will pay the VAT at the custom despite the IOSS mechanism. That's why we believe that before the IOSS regime becomes mandatory it is important to **harmonize the VAT and customs legislation**.

Another step throughout the simplification should be the possibility of extending the use of the IOSS regime also for the collection of customs duties. This should make the IOSS regime more attractive for businesses and would help to speed up customs operations at the time of customs clearance, with significant positive effects in terms of speed of delivery and, at the same time, in terms of customer satisfaction.

Lastly, we believe that whether these instruments will become generalized and mandatory it should be also implemented a system of VAT deduction to speed up the recovery of the VAT paid in other Member State.